be invoked. By section 366 of the Code, so far as applicable to the present case, the ground which the applicant is required to satisfy the court is that his detention is without just cause. The function of the court is merely to determine this. In amplification, the first part of headnote (ii) in *Schtrak's* case, *supra*, reads:

"the proceedings for *habeas corpus*, subsequent to the chief magistrate's committal order, were not an appeal or re-hearing, but the court's function in them was to see whether the prisoner was lawfully detained (e.g. whether there had been jurisdiction to make the order), and the position was analogous to that where a person was committed by justices in England for trial on indictment;"

The position of the applicant here is as if he had been committed for trial in the High Court. Since the applicant knows the reasons for his committal, I am of the view that his detention cannot be without just cause. Illegality of detention can only arise if the detention has been effected without just cause. A detention warrant is a mere formality.

Taking what is relevant to the present case, section 422 of the Code provides "... no finding, sentence or order passed or made by a court of competent jurisdiction shall be reversed or altered on account — of any error, omission or irregularity in the ....., ..., warrant, ..., or in any inquiry or *other proceeding* under this Code; or .... unless such error, omission, ..., irregularity, ... has occasioned a failure of justice." I have italicized the words "other proceeding" to stress that *habeas corpus* proceedings should fall under the expression. If the warrant of arrest and the committal warrant in *Re Caborn-Waterfield, supra*, and the detention order in *Ex parte Johannes Choeldi & Ors., supra*, had been considered under section 422 of the Criminal Procedure Code, it should have been obvious that they contained fatal errors occasioning a failure of justice. But the processes in these two cases cannot be equated with the committal warrants in the present case. In the two cases, the fatal errors occurred from the start. In the present case, the committal warrants were the tail end of the extradition proceedings, after requisition, arrest and hearing which were all proper. I am of the view that the technical defects which Rigby J. in *Ex parte Johannes Choeldi & Ors., supra*, had in mind were such as would have occasioned a failure of justice. In the light of the express provision of our Criminal Procedure Code, they should be, in effect, mistakes which are not curable. Where an error is curable, the court, I should think, is duty bound to cure it so as to serve the cause of justice. In the cases here, the omission by the committal courts to use Form D. I find, is certainly curable by the simple expedient of directing them to issue committal warrants as in Form D. I hereby so direct them.

The applications are dismissed.

Application dismissed.

Solicitors: *Karpal Singh & Co.; Ariffin & Ooi.*

PUBLIC PROSECUTOR v. MOHAMED FATHI BIN HAJI AHMAD

[R.Cr.J. (Harun J.) November 6, 1978]

[Kuala Lumpur — Federal Territory Criminal Revision No. 8 of 1978]

Criminal Law and Procedure — Charge — Duplicity — Four distinct offences in one charge — Irregularity — Whether it could be cured — Criminal Procedure Code (F.M.S. Cap. 6), ss. 153, 163, 165, 173 & 422 — Penal Code, ss. 465 & 471.

Forgery — Accused forged Air Travel warrants to obtain overdraft from bank — Penal Code, ss. 465 & 471.

The accused in this case was a partner of a travel agency. As manager he was responsible for the financial affairs of the firm. The firm sold airline tickets to passengers. These tickets were obtained from the various airlines on credit but payable within 15 days. The firm which dealt solely with government and statutory bodies found payments by them rather slow and made well after the credit period allowed by the airlines so the accused made arrangements with the firm's bankers for overdraft facilities up to the limit of one million ringgit. This facility could only be used by the firm on production of the Air Travel Warrant to the bank.

The firm ran into financial difficulties. To overcome these, the accused used forged Air Travel warrants purportedly issued by the Customs Department. This was presented to the bank for payment. Subsequently the forgery was discovered and the accused was arrested and charged in court. Four charges preferred against him were later reduced to three amended charges. These three amended charges were "telescoped" into a single charge to which he pleaded guilty. The charge read:

"That you sometime between the 16th day of August, 1977 and 26th day of September, 1977 at the Chase Manhattan Bank, Jalan Gereja, Wilayah Persekutuan, Kuala Lumpur, fraudulently used as genuine four documents, to wit, Waran Perjalanan Udara Awam Nos. 9036, 9089, 19032 and No. 19040, which you knew to be forged documents and that you thereby committed an offence under section 471 and punishable under section 465 of the Penal Code."

The learned Magistrate did not record a conviction but acted under section 173A of the Criminal Procedure Code and bound the accused to be of good behaviour for three months. On appeal the High Court found the charge bad for duplicity. The issue was therefore whether the non-compliance with section 163 amounted to an illegality or an irregularity.

Held: (1) the charge though bad for duplicity was an irregularity which was cured by section 422;

(2) the Order under section 173A, Criminal Procedure Code was inappropriate and manifestly inadequate in this case. The accused should, instead, be fined $10,000 in default two years' imprisonment under section 471 read with section 465 of the Penal Code.

Cases referred to:-

(1) *Cheong Sik Kwan* v. *Public Prosecutor* [1959] M.L.J. 189.

(2) *Public Prosecutor* v. *Leong Yoon Meow* [1953] M.L.J. xxxv.

(3) *Public Prosecutor* v. *Syed Bakri* [1955] M.L.J. xvii.

(4) *Public Prosecutor* v. *Low Ah Sang* [1962] M.L.J. 13, 15.

(5) *Mee Lian Co.* v. *Public Prosecutor* [1962] M.L.J. 131.

(6) *See Yew Poo* v. *Public Prosecutor* [1949] M.L.J. 131.

CRIMINAL REVISION.

Wan Abdul Majid bin Wan Hamid (Deputy Public Prosecutor) for the applicant.

Hassan bin Ishak for the respondent.

Cur. Adv. Vult.

Harun J.: The accused is a partner of a travel agency. In his capacity as manager, he is responsible

for the financial affairs of the firm. The business of the firm is to sell airline tickets to passengers. These tickets are obtained from the various airlines on credit but payable within 15 days.

The firm's entire business is with government departments and statutory bodies. Government officers who have to travel by air are issued with Air Travel Warrants in form Am 105 — Rev 10/71 by their Heads of Department which entitle them to exchange the warrants for airline tickets with a travel agency. After issue of the ticket, the travel agency completes the bottom half of the warrant and returns it to the issuing department for purposes of payment.

It is said that government departments are slow in making payments of Air Travel Warrants issued by them to the accused's firm — at any rate the payments are made well after the credit period allowed by the airlines to the firm. So the accused made arrangements with the firm's bankers for overdraft facilities up to the limit of one million ringgit. But this facility may only be used by the firm on production of the Air Travel Warrant to the bank and the amount that may be drawn is limited to the amount stated in the warrant. The bank would make photostat copies of these warrants and return the original to the firm to claim payment direct from the government department concerned. As an additional security the firm issued debit notes to the government department concerned authorising direct payment to the bank, copies of which are kept by the bank.

The firm ran into financial difficulties. To overcome these, the accused devised a scheme whereby he used forged Air Travel Warrants purportedly issued by the Customs Department. Four such forged warrants were presented to the bank as follows:

Air Travel Warrant No:	*Presented on*	*Amount*
9026	16 Aug. 1977	$31,928
9089	7 Sept. 1977	31,928
19032	26 Sept. 1977	67,075
19040	26 Sept. 1977	35,928

On the strength of these forged documents the Chase Manhattan Bank paid out a total sum of $166,859 to accused's firm. The bank, following its usual practice, made photostat copies of these forged documents and returned the original to the accused who destroyed them. On November 15, 1977 the Customs Department received a letter dated November 8, 1977 from the bank's auditors for confirmation of the outstanding amounts shown on the four aforesaid Air Travel Warrants. The Customs Department made enquiries and discovered that none of the persons named in the Air Travel Warrants were officers of the department and further that the warrants had not been issued by the department or were even similar to the ones used by the department. On December 2, 1977 they reported the matter to the police.

On February 6, 1978 the NBI applied to the Magistrate for a warrant of arrest against the accused for offences under section 471 of the Penal Code. The warrant was issued on February 9, 1978 and the accused was arrested on February 16, 1978 and charged before the Kuala Lumpur Magistrate on the same day. Four charges were preferred against him, all under section 471 of the Penal Code but these charges were reduced to three amended charges. He claimed trial and hearing was fixed for July 10 and 11, 1978. He was allowed bail in the sum of $10,000. On June 17, 1978 however, at the request of defence counsel, he appeared in court and the three amended charges were telescoped into a single charge as follows:

"That you sometime between the 16th day of August, 1977 and 26th day of September, 1977 at the Chase Manhattan Bank, Jalan Gereja, Wilayah Persekutuan, Kuala Lumpur, fraudulently used as genuine four documents, to wit, Waran Perjalanan Udara Awam Nos. 9036, 9089, 19032 and No. 19040, which you knew to be forged documents and that you thereby committed an offence under section 471 and punishable under section 465 of the Penal Code."

to which he pleaded guilty.

The question arises regarding the correctness of the charge. The procedure regarding charges is set out in Chapter XVIII of the Criminal Procedure Code. Section 163 provides that for every distinct offence there shall be a separate charge: see also illustration (b) to section 165. Section 153 provides that the charge shall contain particulars as to time and place of the alleged offence. Here the facts disclose that the offences were committed on three separate occasions, two warrants having been presented to the bank at the same time on the third occasion. True the *modus operandi* was the same in respect of all the offences committed by the same person against the same bank but the evidence required to prove each charge need not necessarily be the same in all cases. The only exception to the rule of one offence one charge is contained in section 153(ii) in regard to the offence of criminal breach of trust or dishonest misappropriation of property committed over a period of one year or less. This is the only instance when several offences may be telescoped into a single charge. Although the rule of one offence one charge is precise, it does not follow that there should be separate trials for each charge as there are provisions when several offences may be tried at one trial: see *Cheong Sik Kwan* v. *Public Prosecutor*[1] where the Court of Appeal dealt fully with all these provisions. The charge as it stands is therefore bad for duplicity on two counts viz. it contravenes section 153 for not stating the time each offence was alleged to have been committed and it contravenes section 163 because it is alleged in a single charge the commission of four distinct offences. It is the duty of the court to satisfy itself that the charge is on the face of it properly framed before an accused person is called upon to plead to it: see *Public Prosecutor* v. *Leong Yoon Meow*,[2] *Public Prosecutor* v. *Syed Bakri*,[3] *Public Prosecutor* v. *Low Ah Sang*[4] and *Mee Lian Co.* v. *Public Prosecutor*.[5]

The question then is whether the failure to comply with section 163 is an illegality or an irregularity. In *See Yew Poo* v. *Public Prosecutor*,[6] the Court of Appeal held that if "each of the offences could have been the subject of a separate charge, and could have been proceeded with at one trial, the duplicity was merely an irregularity which can be cured under the provision of section 422 provided that the accused was not prejudiced and there was no failure of justice occasioned by the irregularity." In the instant case, the accused was represented by counsel and was fully

aware that the charge was in fact a consolidation of the three amended charges to which he had earlier claimed trial. If the process was reversed, that is to say, if the prosecution had proceeded with the three amended charges there would have been only one trial. I am satisfied that the accused was neither prejudiced nor has there been a failure of justice and I accordingly hold that the charge though bad for duplicity is an irregularity which is cured by section 422.

I next deal with the subsequent conduct of the case. After the accused had pleaded guilty to the charge, the learned counsel made a plea in mitigation to which the learned Deputy Public Prosecutor said he was not pressing for sentence. In the event the learned Magistrate did not record a conviction and proceeded to bind over the accused to be of good behaviour for a period of three years in the sum of $10,000 in one surety under section 173A of the Criminal Procedure Code. I called this case for revision to satisfy myself as to the propriety of this order.

The power of a court to discharge an offender conditionally is subject to certain conditions which may be briefly summarised as follows:

(i) Regard to character, antecedents, age, health or mental condition of the person charged; or

(ii) The trivial nature of the offence; or

(iii) The extenuating circumstances under which the offence was committed.

Under the first head the only thing that was said of the accused is that he had no previous conviction. Under the second head, this offence is far from trivial. Under the third head, the only excuse he had was that he was pressed for money. There is nothing extenuating about that. It is different if the accused was an underpaid cashier entrusted with large sums of money and had in a moment of weakness succumbed to the temptation to steal his employer's money. Here the offences committed by the accused were deliberate and sophisticated, committed several times, over a period of time, involving a large sum of money. The warrants were specially printed to achieve his illegal purpose and the crime was perpetrated by exploiting the weaknesses of a complicated financial arrangement involving several parties. In my view an order under section 173A of the Criminal Procedure Code is inappropriate and manifestly inadequate in this case.

The object of a sentence is to punish the offender and the sentence should be sufficiently adequate to deter the offender from repeating the offence and at the same time to act as a deterrent to others who might be disposed to commit such an offence. We have developed a comprehensive banking system in this country but this achievement is based on mutual trust and integrity of the parties. What the accused has done here is to shake the confidence of bankers in dealing with customers who are in business like the accused and put honest businessmen in greater hardships to finance their trade. Courts must now appreciate that commercial crime is a very serious offence. It affects our international standing abroad and our trade relations with other countries. It affects the government's efforts at expanding the economy. Millions of ringgit are lost every year due to falsifications and forgeries committed by persons like the accused. Losses suffered by banks through commercial crime is much more than by robberies at the point of a gun.

In all the circumstances of this case, I set aside the order under section 173A of the Criminal Procedure Code and substitute therefore a conviction under section 471 read with section 465 of the Penal Code and sentence the accused to a fine of $10,000 in default two years' imprisonment.

Order accordingly.

Solicitors: *Hassan & Kong Yeam.*

GANGAGHARAN v. SATHIABHAMA

[A.C.J. (Abdul Razak J.) November 27, 1978]
[Kuantan — Civil Appeal No. 3 of 1978]

Family Law — Maintenance — Jurisdiction — Claim for arrears of maintenance amounting to $11,200 — Jurisdiction of Subordinate Courts — Subordinate Courts (Amendment) Act, 1978.

Practice and Procedure — Jurisdiction — Jurisdiction of Subordinate Courts — Maintenance — Claim for arrears of maintenance amounting to $11,200 — Subordinate Courts (Amendment) Act, 1978.

The appellant in this case appealed against the decision of the learned President Sessions Court wherein he gave judgment for the plaintiff/respondent in the sum of $11,200 for arrears of maintenance. The appellant claimed, *inter alia*, that the court had no jurisdiction to make any order for $11,000 since it exceeded his jurisdiction and that the learned President had failed to consider the principle that as a matter of practice, arrears are allowable only for a period of one year.

The Subordinate Courts (Amendment) Act 1978 which empowered the learned President to make an order for an amount not exceeding $10,000 came into effect on July 1, 1978. The learned President made the order on March 6, 1978, four months before the amendment.

Held, allowing the appeal: (1) it has been the practice of the Divorce Division (England) to order payments of arrears not exceeding one year unless there are special circumstances. The rationale behind this lies in the fact that the court treats the payment as a fund for maintenance and not as property;

(2) at the relevant time the learned President was empowered only to make an order not exceeding $2,000 which was the law before the amendment. The respondent would thus be awarded the sum of $1,200 instead as the arrears of maintenance for a period of one year.

Cases referred to:-

(1) *Pilcher* v. *Pilcher No. (2)* [1956] 1 All E.R. 463.
(2) *Kerr* v. *Kerr* [1897] 2 Q.B. 439.
(3) *Amrick Lall* v. *Sowbaiavati* [1973] 2 M.L.J. 191.

CIVIL APPEAL.

Wong Fook Hin for the appellant.

Joseph Au for the respondent.

Cur. Adv. Vult.

Abdul Razak J.: This is an appeal against the decision of the learned President Sessions Court wherein he gave judgment for the plaintiff/respondent in the sum of $11,200. The sum was for the arrears of maintenance from August 1968 until March 1978.

It is common ground that the appellant and respondent were married. It is also common ground